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July 21, 2014

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BY ECF AND HAND-DELIVERY

The Honorable Daniel E. O'Toole
Circuit Executive and Clerk of the Court
U.S. Court of Appeals for the Federal Circuit
717 Madison Place, NW
Room 401
Washington, D.C. 20439

Re: *Exela Pharmaceutical Sciences, LLC v. Lee*, No. 2013-1206 (Fed. Cir.)

Dear Mr. O'Toole:

Pursuant to Federal Rule of Appellate Procedure 28(j) and Federal Circuit Rule 28(i), Appellants submit supplemental authority relevant to issues on appeal. An original and six copies of this letter and attached slip opinion are filed concurrently by hand-delivery

On January, Appellants submitted a letter citing as supplemental authority *Big Lagoon Rancheria v. California*, Nos. 10-17803, 10-17878 (9th Cir. Jan. 21, 2014). In that case, the Ninth Circuit held that the State of California could collaterally challenge a Bureau of Indian Affairs ("BIA") decision—made 15 years earlier—that designated a particular land parcel as "Indian land."

Yesterday, undersigned counsel became aware that the full Ninth Circuit has since vacated the panel decision and granted rehearing en banc in *Big Lagoon Rancheria*. A copy of the Ninth Circuit's order, dated June 11, 2014, is attached. According to that case's docket, oral argument is scheduled for the week of September 15, 2014.

Although the full Ninth Circuit is revisiting the issues decided by the panel in *Big Lagoon Rancheria*, Appellants maintain that the Ninth Circuit's action will not adversely affect the validity of their arguments on appeal here—as presented in the briefs and during oral argument. Prior Ninth Circuit precedent, although not binding on this Court, confirms that a private lawsuit enforcing an agency-sanctioned property right triggers the limitations period when the agency acted *ultra vires*. See *North County Community Alliance Inc. v. Salazar*, 573 F.3d 738 (9th Cir. 2009). Furthermore, during oral argument, the panel's questioning focused almost exclusively on the reviewability issue, not the statute of limitations issue. See Oral



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Argument Audio Recording at 00:30 (Judge Dyk: "I think that you have a pretty good argument about the statute of limitations.").

Even so, Appellants believe that, in the interest of apprising the Court of legal developments, the submission of the Ninth Circuit's en banc order is appropriate.

Respectfully submitted,

/s/ Matthew J. Dowd

Matthew J. Dowd

Enclosure

cc: All counsel of record (via ECF)

FILED

FOR PUBLICATION

JUN 11 2014

UNITED STATES COURT OF APPEALS

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

**BIG LAGOON RANCHERIA, a
federally recognized Indian tribe,**

Plaintiff - Appellee - Cross-
Appellant,

v.

STATE OF CALIFORNIA,

Defendant - Appellant -
Cross-Appellee.

Nos. 10-17803
10-17878

D.C. No. 4:09-cv-01471-CW

ORDER

KOZINSKI, Chief Judge:

Upon the vote of a majority of nonrecused active judges, it is ordered that this case be reheard en banc pursuant to Federal Rule of Appellate Procedure 35(a) and Circuit Rule 35-3. The three-judge panel opinion shall not be cited as precedent by or to any court of the Ninth Circuit.

Judges Owens and Friedland did not participate in the deliberations or vote in this case.

CERTIFICATE OF SERVICE

I hereby certify that, on this 22nd day of July 2014, the foregoing was served via ECF on all counsel of record, including the following counsel for the parties:

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/s/Matthew J. Dowd

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Dated: July 22, 2014